COMMONWEALTH of VIRGINIA

Department for the Aging

Jay W. DeBoer, J.D., Commissioner

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AAA TUESDAY E-MAILING
July 19, 2005

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COMMONWEALTH of VIRGINIA
Department for the Aging
Jay W. DeBoer, J.D., Commissioner

MEMORANDUM

TO: Executive Directors
Area Agencies on Aging

FROM: Tim M. Catherman
Deputy Commissioner, Support Services

DATE: July 19, 2005

SUBJECT: AoA Guidance Regarding Payer of Last Resort

The Administration on Aging (AoA) issued the attached guidance on Older Americans Act program funds being used as payer of last resort.

If you have any questions or concerns please contact me.

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GUIDANCE TO STATES AND AREA AGENCIES ON AGING REGARDING PAYER OF LAST RESORT

There have been questions in the field regarding Older American Act (OAA) programs as "third party payers" for Medicaid services, and Medicaid as the "payer of last resort" for OAA programs. For purposes of determining payment liability, OAA programs should utilize the following definitions:

> A third party payer is an individual, entity, insurer, or program that is liable to furnish health care services or to pay for all or part of the costs of medical assistance covered under a Medicaid State plan or other Medicaid funded source. Third party payers include, but are not limited to: employment related health coverage; medical support from non-custodial parents; court judgments or settlements from a liability insurer; first party probate (estate recoveries); and other federal and state mandated/state-run programs, unless specifically excluded by statute.
>
> Payer of last resort is the term used to denote that Medicaid is liable for payment for care and services only after all other liable third parties have met their legal obligation to pay. Unless otherwise provided by Federal statute, **Medicaid is the "payer of last resort" for care and services provided to Medicaid recipients.**

Most of the "third party payers" listed in the above definition are considered liable for payment: (1) due to entitlement provisions, i.e., a federal or state program is obligated by statute or regulation to provide specified services to eligible individuals; or (2) because the client (or someone on the client's behalf) pays a premium for health/casualty insurance coverage. Other individuals, entities, insurers, or programs have payment liability due to legal judgments. Because OAA services are not provided subject to a statutory or regulatory entitlement, are not purchased with premiums, and are not provided secondary to legal judgments, **OAA programs do not qualify as third party payers for Medicaid purposes**.

Guidance Regarding Payer of Last Resort – continued

There are cases when a client may be eligible to receive services funded by both Medicaid and OAA programs. When this occurs, the OAA provision of "non-supplantation" applies (OAA Sections 321(d) and 374). Non-supplantation means that OAA funding may not be used to supplant (or substitute for) other Federal, State or local funding that was being used to fund services, prior to the availability of OAA funds. In practice this means if an older person initially receives services under the Medicaid State plan or home and community based waiver services, the individual may continue to receive those services as long as he or she remains Medicaid eligible, even if a similar program (funded by OAA) exists in the same service area. The reverse is also true, that is, if an older person initially receives a service funded by OAA funds, that service should continue to be provided by the OAA program even if the older person becomes eligible for Medicaid funded services.

Interim Services

If an older person has applied for services through Medicaid and is either waiting for his/her application to be processed or is on a waiting list, services may be provided through the Older Americans Act on an interim "emergency" basis until the date the older client is determined eligible for Medicaid.

For additional information on "payer of last resort" and "third party payer" contact the Regional Office of the Administration on Aging for your area.